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File No. Merchant Shipping/12

Legal

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DEPARTMENT

BRANCH

p. 13(E)

Subject:—

Persons under the Indian Merchant Shipping Act, 1923.

File No. J. Merchant Shipping/12

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Submitted.

Attention is invited to letter addressed by the Chairman, Port Haj Committee Bomba , to the Government of India, Department of Indian Overseas dated 6th January 1942(vide cop at pages 39-43 ante) ~~the~~ forwarding le ter of the Government of Bombay No. 6191/507-B dated 14th January 1942 and to the R..A.'s opinion No.10825 dated the 15th December 1941, the Govt. of Bbay requested The Government of India to issue clear directions to the shipping Co. that unless there were Government orders to the contrary it should not refuse to book a pilgrim who holds a valid passport is prepared to fulfil the conditions prescribed by the law and the rules, and tenders the prescribed ~~xx xxx xxx~~ passage money. The Government of India, however, state they are advised that -

(i) section 208 B of the Indian Merchant Shipping Act, 1923, which applies to pilgrims travelling on a pilgrim ship and not to persons who intend to travel as pilgrims, does not cover the case of a refusal by the shipping Co. to book passage for a person intending to travel on a pilgrim ship;

(ii) that even if Messrs. Turner Morrison and Co. were to be regarded as public carriers in respect of pilgrim ships, the rejected passengers' remedy would be in the civil courts and the Central Government have no legal powers to interfere by executive order.

2. The Chief Secretary holds that the Government of India's interpretation seems to be extraordinary. The papers are, however, shown to the R.L.A. with reference to his opinion No. 10825 dated the 15th December 1941. Presumably, the R.L.A.'s

R.L.A.'s advice is requested on the question whether the view expressed by the Govt. of Indiax is correct.

3. The interpretation placed by the Government of India on section 208-B does not appear to be correct. Under sectkon 206(1) no pilgrim shall be received on board any pilgrim ship at any port or piace in British India unless and until he has been medically inspected nor until the certifying officer has given permission for the embarkation of pilgrims to commence. Under section 208-A no pilgrim shall be received on board any pilgrim ship at any port or place in British India for conveyance in the lowest class unless he--

(a)is in possession of a return ticket or, (b) has deposited with the prescribed person such sum for the purpose of defraying the cost of return ticket as the Central Government may specify by notification in the Official Gazette (vide also rule 132). Section 208-B(1) provides that every pilgrim travelling on a pilgrim ship shall be entitled, on payment of his passage-money and fulfilment of other prescribed conditions, if any, to receive a ticket in the prescribed form etc. t Under explanation I to section 149(3)a Mahammadan passenger who has embarked with the intention of going to Hedjaz but returns without landing there is deemed to be a pilgrim. Under clause (q) of sub-section (1), of section 213 of the Act, the Central Government is

Central Government is authorised to make rules regulating the supply of tickets to intending pilgrims and under clause(ww) providing that a pilgrim shall not be recived on board any pilgrim ship unless he is in possession of a passport or a pilgrims pass and regulating theissue of pilgrims'passes etc. As regards the rules made in this behalf attention is invited to rule 124(1) which provides that every intending pilgrim shall obtain from the authority appointed in this behalf a pilgrim pass and shall present the same for registration to the Executive Officer of the Port Haj Committee of the post of embarkation. Rule 130 inter alia provides that no ticket shall be issued to a pilgrim who does not produce his pilgrim-pass duly registered at the port of embarkation. Under rule 131 when a ticket is issued to a pilgrim, the person issuing the same shall write the class and serial number of the ticket and the name of the ship by which the outward voyage is to be performed in the spaces provided for this purpose in the pilgrim pass of such pilgrim. Sections 149(3), 203-A and 208-B(1) and rules 124, 130 and 131 read together make it clear that the words "every pilgrim travelling on a pilgrim ship" in section 208-B(1) mean very intending pilgrim who wishes to travel on a pilgrim ship. Consequently a Muhammadan passenger who intends to travel as a pilgrim will be entitled to receive a ticket under section 208-B(1) of the Act on payment of his passage money and fulfilment of other prescribed conditions. Theview taken

The view taken by the Government of India does not seem to have taken into consideration the definition of the term "pil rim" in section 149(3).

4. The Carriers Act, 1865, does not appl to carriers by sea(vide section 2) persons who carry good or pas en ers, for hire or gratuitously, by land or water, are carriers and such carriers may be ~~kmxix~~ divided into two classes- comon carriers and private carriers. A "common carrier" exercises the public emplo ment of carrying either goods or passengers or both b y land or by water. Although their duties and liabilities are different, it would ~~kx~~ seem that there is no distinction to be drawn between what constitutes a common carrier ~~mx~~ of goods a d a common-carrier of persons. To constitute a person a common carrier he must hold himself out as being ready to carry for hire as a business and not as a casual occupation (vide para. 1 at p. 2 of Halsbury's Laws o England Vol.4). A com on carrier of passengers is under a duty to carry, and is ready to pay, for so long as there is sufficient accommodation. In this respect his duty is similar to that of a common carrier of goods (Clarke Vs. West Ham Corporation(1909) 2 K. .D. Vol.II page 858; para 89 at p. 60 of Halsbury's Vol. 4 and note 8 at page 70 of Empire Digest Vol. 8). If a common carrier of passengers refuses to carry a passenger it appears that he can be compelled to carry and may be indicted for refusal. It is a duty cast upon common carriers by reason of their exercising a public employment for

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any one who offers himself for carriage

reward and a breach of this duty is a breach of law, and for this breach an action would be founded in the Common Law (pp. 25-26 of Law of Carriers by Lahiri) It appears that under section 213(1)(x) of the Indian Merchant Shipping Act, the Central Government will be competent to make rule providing that a pilgrim who holds a valid passport and is prepared to fulfil all the requirements of the act and the rules should not be refused passage except on account of want of accommodation on the pilgrim ship .

Sd/- E.Bhamgara.
13/5

S.A.S.

Section 208-A of the Merchant Shipping Act, 1923 provides that no pilgrim shall be received on board any pilgrim ship at any port or place in British India for conveyance in he lowest class available in the ship unless he-

(a) is in possession of a return ticket, or

(b) has deposited with prescribed person such sum etc.,

Section 208-B (1) lays down down that every pilgrim travelling on a pilgrim ship shall be entitled on payment of his passage money etc. to receive a ticket in the prescribed form etc. If these provisions are read together it will be clear that a person does not become a pilgrim travelling on a pilgrim ship within the meaning of section 208-B(1) unless he is received on board any such pilgrim ship under section 208-A and that he cannot be received on board any such

ship unless he is in possession of a return ticket. This means that a person intending to be a pilgrim must first apply for a return ticket and on such ticket being issued he will be entitled to travel and it is not that a person who is actually travelling as a pilgrim is alone entitled to receive a ticket on payment of passage money. The expression "travelling" in section 208-B therefore, means "intending to travel". This view is further reinforced by rules 124(1), 129 and section 208(c). Under rule 124(1) every intending pilgrim shall obtain from the proper authority a pilgrim pass and under rule 129(1) the ticket which a pilgrim is under sub-section (1) of section 208-B entitled to receive, shall be issued from a book with counterfoils. Under section 208-C(1) every pilgrim prevented from embarking under section 206 or removed from the ship under section 207 or otherwise prevented from

The Government of India's letter dated 24th April 1942 seems to be based on the view that a person who has been refused a ticket cannot be deemed a passenger and therefore cannot be deemed a pilgrim. In this connection attention is invited to the definition of pilgrim in section 149(3) of the Indian Merchant Shipping Act, 1923:- "Pilgrim" means a Muhammedan passenger irrespective of age going to, or returning from, the Hedjaz. There are many definitions of 'passenger'. Aiyar's Law Lexicon of British India gives at least fifteen. It is clear that it is not necessary to embark in order to become a passenger. A person may become a passenger at an earlier stage. For example, a person who has bought a ticket but had not yet embarked would ordinarily be a passenger. But is it sufficient to proffer money for a ticket? There is a Madras case, In re Komaran, 45 Madras 215 which at one place implies that in order to become a passenger it is sufficient to intimate an intention to travel. Again, one of the definitions in Aiyar's Law Lexicon is this:- "One coming in good faith to the depot to take passage on the cars is a passenger though he has bought a ticket". On the other hand many of the definitions imply that there must be at least an implicit contract between the person and the Company, before the person can be deemed a passenger. If the Company refuses, rightly or wrongly to issue a ticket, there cannot be a contract and the person would not be a passenger. Since there is authority for the view that there must be at least an implied contract before a person becomes a passenger it does not seem advisable to dispute the matter with the Government of India. If that view be accepted, it follows that Mr. Ramzani was not a passenger and therefore not a pilgrim. Since he was not a pilgrim, so far as the Indian Merchant Shipping Act was concerned, the provisions of that Act would not apply to him and Government could not call upon the Shipping Company to perform any duty under that Act. If Mr. Ramzani is advised that the Company's refusal to issue a ticket is a breach of its duties as a carrier, he may seek

& seek this remedy in the Civil Court.

2. It may be noted that section 208-A of the Indian Merchant Shipping Act, applies only to pilgrims intending to travel in the lowest class available on the ship. It does not appear to be stated in the papers whether or not Mr. Ramzani was going to travel in the lowest class. If he were intending to travel in any other class, then in any case the provisions of section 208-A would not apply to him.

Id/-P.N.M.
16/6

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No., 247-Confl., dated the 16th June 1942.

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R.I. 11666/42

Submitted.

It appears that two Chinese seamen, Wang Lam Loi and Hum Ngan Kan signed on "S.S.Iran" at Hongkong. When the ship touched Bombay in July last, she was lying out in stream and the two seamen in question went out to see their friends on "S.S.Panamania Due to rough weather they were forced to remain on board "S.S.Panamanian". When the storm subsided, they made their way back when they found that the ship had already sailed. They immediately reported the matter to the Chinese Consulate which directed them to Lionel Edwards Ltd. Agents of their ship but they refused to assist. Messrs. Lionel Edwards Ltd. classed the seamen as deserters but when they were asked to launch prosecution they were not prepared todoso. They even refused to comply with the request of the Counsul for China for the maintenance of the seamen and their eventual pepartiation. It is stated that "S.S.Iran" is not a British but Panamanian ship.

2. The Chief Secy. Is of the opinion that the Company has not established that the seamen in question are deserters. The Principal Officer, M.M.D., observers, that Messrs. Lionel Edwards Ltd. should have prosecuted the seamen as deserters and since they are not proved to be deserters, Messrs. Lionel Edwards Ltd. would be liable for subsitence. The R.L.A. is requested to advise whether Messrs. Lionel Edwards Ltd. are liable for the maintenance of the two seamen in question.

3. Messrs. Lionel Edwards Ltd. have not started prosecution against the seamen under

section 100(ii) of the Merchant Shipping Act, 1923, It is also not clear whether the seamen have been discharged so as to attract the provisions of sec. 119 of the Act. In the absence of any proper data, it appears that the persons in question may be regarded as distressed seamen to whom the Merchant Shipping Acts (1894-32) do not apply. Sec. 79 provides that where any expenses are incurred by a local authority under this Part on account of a distressed seaman either on his subsistence, necessary clothing, conveyance home, etc., these expenses together with wages, if any, due to seamen shall be a charge upon that ship whether British or foreign, to which he belonged. Under sec. 80, all such expenses and wages shall be recoverable with costs either from the Master of such ship or from the person who is owner thereof for the time being, or in case of an engagement for service in a foreign ship, from such Master or owner or from the person by whom such engagemant was to be made in the same manner and by the same form of process in which wages due to the disstreesed seamen would be recoverable by him. Under sec .83 in all proceedings (under sec. 81) under this Part, whether in British India or elsewhere, the production of a certificate signed by the local authority by which any distressed seaman was relieved or any expenses were incurred under this Part, to the effect that such seamen was in distress and that such expenses were incurred in respect of such seaman, shall be sufficient evidence that such seaman was relieved conveyed home, as the case may be, at the expense of the revenues of India. Under sec. 84, Central Government can make rules determining the circumstances and conditions to which distressed seamen may be relieved and provided with passages under this Part and generally to carry out the provisions of this Part regarding distressed seamen. On informal

On informal inquiry from P.& S.D. it is understood that no rules are framed under sec. 84 by the Central Govt. From sec. 74(1)(b) however, it

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appears that these provisions apply to e seamen who not being Indian subjects have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and are in distress in any such place. As in the present case the seamen in question were signed on "S.S.Iran" at Hongkong and as it is not a British ship, it does not appear that the aforesaid provisions of the Act can be resorted to. It is therefore doubtful if Messrs. Lionel Edwards Ltd. can be legally called upon to bear the maintenance and repatriation charges of the seamen in question. The matter may be referred to the Central Govt. for their advice.

4. It is not clear whether the provisions of the Merchant Shipping Acts have been made applicable to the Panamanian ships by order in Council or by any agreement with the Govt. (vide sec. 734 at p.408 of Vol. 18 of Statutes of England). If, not, it will be a matter for the Counsul of China.

Sd/- B.Bhamgara.
18/11

S.A.S.

Section 4 of the Indian Merchant Shipping Act, 1923, provides that this Act shall not, except where specially provided, xxapply to ships belonging to His Majesty or to ships belonging to any foreign Prince or State and employed otherwise than for profit in the public service of that foreign Prince or State. It appears that the ship known as "S.S.Panamian" in the present case is a foreign ship, but it is not known whether she was employed otherwise than for profit in the public service of the foreign State when she touched Bombay in July last.

Office of the R.L.A.

It is not known whether the Indian Merchant Shipping Act,1923, or the English Merchant Shipping Acts (1894-1906) apply in the present case. Without knowing the statutory Rules framed by Board of Trade under the Merchant Shipping Acts and the Shipping treaties which British has entered into with foreign countries, it is impossible to be definite on that point. In either case it does not seem the concern of the Bombay Government but the Central Government and a reference may be made to that Government or the 'Local Authority', if any, whom that Government has appointed under the Indian Merchant Shipping Act.

Sd/- P.N.M.
1/10/42
Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 9643, dated the 2nd December 1942.

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HC